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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 254 (ALC)

5 REGINALD FOWLER,

6 Defendant.

Conference

7 -----x

8 New York, N.Y.

9 April 20, 2023

3:30 p.m.

10 Before:

11 HON. ANDREW L. CARTER, JR.,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the

Southern District of New York

16 BY: SEBASTIAN A. SWETT

SAMUEL P. ROTHSCHILD

17 SAMUEL RAYMOND

Assistant United States Attorneys

18 SAPONE & PETRILLO, LLP

19 Attorneys for Defendant

20 BY: EDWARD V. SAPONE

21 Also Present: Anthony Imperato, Paralegal Specialist

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(Case called; appearances noted)

THE COURT: Good afternoon. Please be seated.

Before we get started, defense counsel filed a motion to adjourn sentencing today. The government filed a letter in response opposing that but suggesting some sort of compromise.

I do think that perhaps a compromise is warranted here in that the government indicates that there are victims who have flown to New York to be here for a sentencing. I think it makes sense to perhaps hear from those victims today, and we can adjourn the sentencing to deal with the other issues later. But let me hear from counsel for the government as to your thoughts about that.

MR. SWETT: Thank you, your Honor.

We would propose proceeding on the sentencing and the forfeiture aspect today. We think that those are both teed up.

There are, as we understand it, no factual disputes about the offense conduct. There are no disputes as to the guidelines. There are no disputes as to the amount of forfeiture, although there are legal arguments as to the appropriate amount under the Eighth Amendment. And so it is in our strong interest to proceed with a sentencing that has been adjourned a number of times and that has been pending for quite some time.

With respect to restitution, it does not need to be imposed at the time of sentencing. We have presented and we've

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1 provided exhibits detailing what we think are recoverable
2 expenses incurred by the AAF. We have an individual here,
3 Mr. Brian Engel. He's the trustee of the AAF. He has
4 submitted a factual proffer as part of our sentencing
5 submission in support of restitution. We made him available to
6 the extent defense counsel wants to question him, if defense
7 has factual disputes as to the amount of restitution or the
8 expenses that have been provided by the government.

9 However, if that is something that the Court wants to
10 defer, that is fine. But it is our position and it is our
11 strong desire that we can do the sentencing today and that the
12 Court can decide both the term of incarceration and forfeiture.
13 We think everything is teed up for that. We are prepared.
14 We've put a lot of effort into it. Defense counsel has
15 submitted a submission making their arguments, and we're
16 hopeful that we can take care of that today.

17 THE COURT: OK.

18 Let me hear from defense counsel, because my reading
19 of defense counsel's letter wasn't simply that the defense
20 needed more time to challenge restitution but that the defense
21 was looking for more time to deal with other matters regarding
22 the sentence, such as any custodial term or the like. But let
23 me not put words in your mouth.

24 Let me hear from defense counsel.

25 MR. SAPONE: Yes, your Honor.

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1 I just want to start off by saying I have nothing but
2 respect and admiration for the government. We get along, as
3 the British would say, smashingly, but we don't agree here in
4 this instance, and here's why -- and it's no one's fault, but
5 the reality is that I had yesterday to try to learn the
6 contents of a very fulsome, very well-written 16-page
7 single-spaced sentencing submission with exhibits that numbered
8 more than 300 pages, and I had Mr. Fowler come into town early
9 so we could spend the time working, and I worked until 3:45 in
10 the morning and I did my best to be ready today, and the truth
11 is, and I regret saying this, I cannot be ready today, because
12 as your Honor started to say, I think, it goes beyond just what
13 is the restitution amount.

14 I believe that this witness, Brian Engel, is a lawyer,
15 and he is a lawyer for the trustee in the bankruptcy
16 proceedings for the league. When the league went into
17 bankruptcy, a trustee was assigned, and that trustee has a
18 lawyer, who is Mr. Engel.

19 I believe at the heart of this case, as to punishment,
20 as to how many years in prison, if any, Mr. Fowler will be
21 sentenced to bears upon whether or not Mr. Fowler harmed the
22 league and to what extent. And I am not ready to cross-examine
23 Mr. Engel as to that issue -- not just restitution but harm to
24 the league.

25 What I was able to find, your Honor, in the last 24

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1 hours, independently -- and I'm not saying that the government
2 had it; I'm just saying I found it -- was what I handed up to
3 your Honor, which is a 64-page complaint in the bankruptcy
4 action in Texas. And the reason that's significant, your
5 Honor, is that until the last 24 hours, I believed that the
6 government's position was that Mr. Fowler harmed the league
7 because Mr. Fowler, according to the government, had promised
8 funding and did not supply the funding, which then caused the
9 league to go out of business and go belly-up.

10 I now read, for the first time in that 64-page
11 complaint that your Honor has at the bench, that a lawsuit was
12 initiated by no other than Brian Engel, the lawyer for the
13 trustee, in which he is blaming not Mr. Fowler, but he's
14 blaming Mr. Dundon. In other words, after Mr. Fowler made it
15 clear that he could not or would not put the money up, the
16 league went elsewhere, and it is my understanding -- but I need
17 to run these issues down; that's why I'm asking for one week,
18 because I now understand that Mr. Dundon put substantial money
19 into the league and made promises and that when the league went
20 belly-up, the league thinks that it's Dundon's fault, not
21 Mr. Fowler's, and that changes the whole landscape of the case.

22 And so what I want to do is I want to get prepared to
23 cross-examine Mr. Engel. I want to see what else is in that
24 64-page complaint that might be important to my defense at
25 these sentencing proceedings. I want to get my hands on 3500

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1 material, because I'm sure that Mr. Engel sat down with the
2 government, and maybe they asked him who is responsible for the
3 demise of the league. I want to see those notes. And again,
4 I'm not blaming anyone, but I need to do more work.

5 My concern is that I'm not able to provide effective
6 assistance of counsel because I had yesterday to try to learn
7 too much material. I worked until as late as I could.

8 Last thing I want to say, your Honor, if there are
9 victims here that want to be heard -- in other words, like
10 victim impact statements -- I have no problem with that,
11 because I don't want folks to waste any time flying into New
12 York for no reason. I won't even ask them a question. But
13 because this bears directly on punishment, I need more time.

14 THE COURT: OK. Let me just confirm with the
15 government.

16 Are there victims here today who wish to speak?

17 MR. SWETT: Yes, your Honor.

18 Just very, very briefly, first, I did misspeak.
19 Mr. Engel is the lawyer for the trustee. I called him the
20 trustee of the AAF. I just wanted to make sure I corrected
21 that. And I do want to make it clear that we had provided
22 information about this second investor as far back as when we
23 were producing 3500 in advance of trial. We reiterated that on
24 February 20, when we provided an overview of our view of
25 restitution, but I'm not otherwise litigating what Mr. Sapone

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1 just said.

2 There is a representative of the AAF here who would
3 like to speak as a victim as to the demise of the AAF and his
4 experience going through that.

5 THE COURT: OK. And let me also find out, regarding
6 Mr. Engel, does the government have a sense as to the length of
7 your -- were you planning on calling him to the stand and doing
8 sort of a direct of him and then having him crossed? Or what
9 were you planning on doing, just having him available for the
10 defense to cross him?

11 MR. SWETT: We planned on having him available. We
12 submitted a proffer from him, and we have been attempting to
13 learn whether the defense wanted to cross him or not, and we
14 did learn that 3:30 this morning. But we had already asked him
15 to be here as a precaution. So we did not plan on examining
16 him. We have his statements through our exhibit, but we
17 thought that there might be a desire to cross him.

18 THE COURT: And other than this individual from the
19 AAF, are there other victims here today who wish to speak?

20 MR. SWETT: Your Honor, we are not aware of any. No,
21 we're not aware of any victims that are here today to speak.

22 THE COURT: All right.

23 It seems to me what makes sense is let's have that
24 victim address the Court. It is certainly not standard
25 procedure or, I think, even appropriate for defense counsel to

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1 cross-examine this person. This person will make their
2 statement, and then we can adjourn this matter for the
3 continued sentencing hearing.

4 MR. SWETT: Thank you, your Honor.

5 The individual's name is Boris Treyzon.

6 Where would you like him to make the statement from?

7 THE COURT: He can either stay seated there in the
8 audience. We'll bring him the cordless microphone, and if that
9 doesn't work, if he doesn't have any mobility issues, he can
10 come to the podium.

11 MR. TREYZON: Thank you very much.

12 My name is Boris Treyzon.

13 THE COURT: Thank you. Go ahead.

14 MR. TREYZON: Once again, good afternoon, your Honor.

15 I am an attorney. I am special litigation counsel for
16 the trustee in the AAF bankruptcy matter. We wanted to address
17 some of the issues that came up -- and they were put forth by
18 the defendants -- and that speak as to the methodology that was
19 used in order to prepare our victim impact statement.

20 Your Honor, a lot has been said in the submissions
21 whether the harm that has been suffered by the AAF was either
22 direct or indirect, and this is the part that I wanted to
23 address.

24 AAF was an entity that was created for the purposes of
25 organizing a football league, and as parts of its creation, as

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1 it was going through the inception, Mr. Fowler came forth and
2 agreed to provide funding for it. As part of providing funding
3 for it, he asked for and became a member of the board of
4 directors, the finance committee, the football committee. He
5 was intimately involved with the operation of the league.

6 As part of doing that, certain documents were created,
7 and one of those documents is part of the exhibit G that the
8 government has submitted, which is -- puts forth the
9 memorandum, like the deal points. One of those memorandums of
10 the term sheet provided that the money that Mr. Fowler
11 committed is segregated and placed in a separate account for
12 the AAF league.

13 Then as part of being a part of the budget committee,
14 on a regular, ongoing basis -- daily, weekly, with very much
15 regularity -- Mr. Fowler was part of the process where AAF
16 would go out and commit to paying salaries, to hiring vendors,
17 to providing money for the daily operations of the league. On
18 an ongoing basis, regularly, those expenses were being made
19 when the league was under impression that it had money sitting
20 in the bank in a separate, segregated account.

21 When ultimately the league folded -- right? When
22 ultimately it came out that Mr. Fowler was not providing the
23 money, notwithstanding representations over and over again that
24 it's nothing but a timing issue, that it's a transfer issue,
25 that he needs to talk to the bank, the league was essentially

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1 like a dog hit on the freeway by a car. It was wobbling
2 around. It was searching for anybody who would provide it a
3 lifeline to go forward.

4 At this point, it was in the middle of the first
5 season, and it had no choice. It had to go forward.

6 So the impact of that, your Honor, has been when the
7 league ultimately did fold, it was unable to pay its promised
8 bills. We had people who suffered injuries that were unable to
9 obtain medical care that feel the effects of that to this day.
10 We have 450 players who pretty much missed out on most of their
11 career because they did not commit to different plays. They
12 committed to playing in this league on a three-year contract.

13 The effect of this has been nothing but direct. We
14 are not bringing forth victims who didn't get paid, because the
15 contract, that agreement, the agreement to provide this money,
16 was made directly with my client. It was not made directly
17 with the players. AAF, and the league who stands in its shoes,
18 was promised this money was made, it's available, it is in a
19 segregated account.

20 And to address what the defense has put forth, there's
21 been a segregation between damages that have been done by
22 Mr. Fowler's statements and the untruth contained therein and
23 what happened afterward, when Mr. Dundon came in. So all
24 together, the forfeiture and the restitution that is being
25 sought here in this case is directly caused by Mr. Fowler's

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1 misdeeds, not what happened afterwards, when a subsequent
2 follow-on investor came in.

3 THE COURT: OK.

4 MR. TREYZON: That's all, your Honor.

5 THE COURT: All right. Thank you.

6 MR. TREYZON: Thank you.

7 THE COURT: Before we adjourn and get another date,
8 let me just find out from defense counsel, at this point, other
9 than the issue of restitution, what other issues are there for
10 which there might need to be some sort of additional fact
11 finding or evidentiary hearing?

12 MR. SAPONE: The nature and circumstances of the
13 offense under 18 U.S.C. 3553(a)(1), in my opinion, will be in
14 dispute and will be determined in part by what harm, if any,
15 Mr. Fowler caused versus what the subsequent investor caused.
16 So that's one issue.

17 Another is, under 3553(a), the seriousness of the
18 offense in that, while, of course, it's serious -- I would
19 never say it's not -- there will be a difference depending on
20 what Fowler caused versus what he didn't. OK? So to the heart
21 of sentencing and punishment, that's one issue, for the reasons
22 I just stated.

23 Another issue is forfeiture, and that is, your Honor,
24 \$750 million more or less ran through various bank accounts in
25 the United States and in Europe. In the United States, it is

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1 my belief that approximately \$220 million ran through the U.S.
2 bank accounts and the other 500-plus million in foreign bank
3 accounts. And so as to forfeiture, your Honor may find that it
4 doesn't matter right now if all of the money ran through U.S.
5 bank accounts, and your Honor may find that an Eighth Amendment
6 violation is not appropriate based on the maximum fine and
7 based on some of the facts. But we believe that that's an
8 issue for the Court -- the extent of forfeiture and whether or
9 not it triggers the Eighth Amendment.

10 Another issue, your Honor, is restitution, and that is
11 obviously identifiable victims and direct harm that Mr. Fowler
12 caused versus consequential damages.

13 The guidelines themselves, your Honor, we have to
14 obviously calculate, and so I don't know about the two-level
15 enhancement for harm to any victim, because it's my
16 understanding that although \$750 million ran through various
17 bank accounts, no bank lost money and no person lost money and
18 that we have, on the one side, your Honor, under 2S, because
19 money was involved, there could be a 30-level increase if
20 between 550 million and 1.5 billion -- if that amount of money
21 was involved, quote/unquote, under the 2S statute -- I think
22 it's 2S1.3 -- then there should be a 30-level increase. But
23 there's a five-level cap on the unlicensed money-transmitting
24 business. So the way that a sentence would ever exceed five
25 years is because of grouping, because --

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1 THE COURT: OK. I get that. What I'm trying to find
2 out now in terms of scheduling --

3 MR. SAPONE: Yes.

4 THE COURT: I understand these are arguments that you
5 are making based on facts that I think are part of the record,
6 and they're legal arguments you're making. I'm trying to
7 figure out, are you seeking some sort of *Fatico* hearing
8 regarding these guideline issues? Are you seeking some other
9 sort of evidentiary hearing?

10 The government has indicated there's this witness
11 they're going to make available to you. Are there other
12 witnesses that you're interested in calling or other facts that
13 need to be brought to my attention to supplement the record?

14 MR. SAPONE: No. I think both sides agree that \$750
15 million ran through various bank accounts, and we don't need a
16 witness come to say that. How that gets applied and how the
17 guidelines are calculated will be something we don't need a
18 witness for.

19 THE COURT: OK. So do we need a witness? What do we
20 need? This witness is going to testify about issues concerning
21 restitution and you're going to make those same arguments based
22 on the facts from this witness regarding the nature and
23 circumstances of the offense. I just want to find out, what
24 other facts are there that you are seeking, if any, to
25 supplement the record?

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1 MR. SAPONE: What harm, if any, Mr. Fowler caused to
2 the AAF versus what harm did the subsequent investor cause. To
3 me, that's the heart of the argument.

4 THE COURT: Right. That's the argument. I guess what
5 I'm trying to figure out is -- I just want to make sure that
6 we're not in a situation in which we adjourn this for
7 sentencing and then we end up adjourning this again because
8 you're looking for some other witness or some other facts or
9 some other documents.

10 MR. SAPONE: Yes, your Honor.

11 THE COURT: I understand the arguments and the
12 different positions that the parties are taking. I'm just
13 trying to figure out what other witnesses or documents, if any,
14 are you looking for?

15 MR. SAPONE: So, I guess the truthful answer is I
16 don't know what I'm going to find. I, in the last 24 hours,
17 came up -- that is, discovered -- that 64-page complaint, and
18 it's pointing all fingers at the other individual, not at
19 Mr. Fowler, even though he's mentioned. So I don't know what
20 I'm going to find, is the truth.

21 THE COURT: What does that mean? I guess if you can
22 be more clear -- what do you mean by that? This witness, the
23 victim, just testified about that. Certainly it is possible
24 that harm could be caused by more than one individual to the
25 AAF. When you say you don't know what you're going to find, I

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1 guess that's what I'm trying to figure out.

2 If the issues that you're talking about are issues
3 that go to the guideline calculation and these are enhancements
4 that the government is seeking, certainly you could ask for a
5 *Fatico* hearing and we could figure out burdens of proof and the
6 like, but I don't know if that's what you're asking for. I
7 guess that's what I'm trying to figure out. I understand you
8 want to make arguments. You have this document that you just
9 found. You're going to make arguments based on that. That's
10 fine. I just don't want to be in a situation where we're
11 adjourning this again. That's what I'm trying to avoid.

12 MR. SAPONE: Yes, your Honor.

13 THE COURT: Can you give me a sense of what you think
14 you might find or what you're looking for, and if you find
15 something, what will it mean?

16 MR. SAPONE: Sure. I may find proof --

17 THE COURT: Hold on just a second.

18 MR. SAPONE: Yes.

19 THE COURT: Just one second.

20 MR. SAPONE: Yes, your Honor.

21 THE COURT: OK. Go ahead.

22 MR. SAPONE: Proof that individuals other than
23 Mr. Fowler are responsible for the league folding --
24 specifically, it was Mr. Dundon's fault, not Mr. Fowler's
25 fault. And I don't know how I would prove that, because I have

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1 not -- I have not done my investigation. But by reading this
2 complaint, it appears that there are a lot of facts and details
3 that would support what I just told the Court; that is, that
4 the reason that the league went out of business is because
5 Mr. Dundon made certain representations that he did not pull
6 through on and, as a result, the league went out of business
7 and Mr. Dundon got sued.

8 THE COURT: OK. Again, what I'm concerned about is,
9 based on what you're saying, you're saying you're going to be
10 looking for some things. You don't know what you're going to
11 find until you find them and when you find them, if you find
12 them, they will be within this week's period of time that
13 you're looking to adjourn this for.

14 If you find something, the government has a right to
15 see this --

16 MR. SAPONE: Yes.

17 THE COURT: -- so that they're not just sandbagged at
18 the last minute when we have this sentencing hearing. So I
19 guess what I'm wondering, even though I hate to say this, I
20 don't know how we can adjourn this for a week if we have to
21 wait for you to do some sort of investigation and then give the
22 government an opportunity to look at this. It seems like we're
23 going to be in this -- I just don't want to have a situation in
24 which we put this on for a week, you find something at the last
25 minute, give it to the government, the government flies people

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1 down here for this and we end up adjourning it again.

2 MR. SAPONE: Yes. I can tell your Honor the reason I
3 selected a week is because it was palpably clear to me that
4 folks wanted to get on with it, and I can work hard and long
5 hours, so I did not want to ask for more than I needed to. I
6 was trying to be extra reasonable.

7 THE COURT: All right.

8 What's the government's position on this?

9 MR. SWETT: Your Honor, having heard Mr. Sapone's
10 representations, none of these facts are disputed and none of
11 these facts are new. Mr. Sapone has arguments that he wishes
12 to make based on these facts, arguments about the guidelines
13 and arguments about the 3553(a) factors. But we're not
14 disputing that after Mr. Fowler's funding disappeared, another
15 investor came and propped up the league for a few more months
16 until it declared bankruptcy. We're not disputing that, and
17 we're not -- and Mr. Sapone is free to argue that that is
18 relevant for the Court's sentence.

19 I think there are a couple of key points here that I
20 want to make sure are clear.

21 One, Mr. Fowler has pled guilty to wire fraud against
22 the AAF. I mean there's no question here about whether he
23 actually defrauded them or not. To the extent there is a
24 question about the degree to which his fraud caused recoverable
25 losses, as we said, that's restitution. We have put in

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1 information about restitution, but the Court does not need to
2 impose that today or in a week if the sentencing is in a week.
3 So that's point one.

4 Point two, on restitution and on the point of whether
5 we even need to have any kind of factual finding as to
6 restitution, all we are seeking in restitution are expenses
7 that were incurred during the period of time when the defendant
8 was the lead investor in the league. Everything after that we
9 are not saying he is responsible for, and it is a smaller
10 number than the entire amount of claims in bankruptcy for
11 exactly that reason. And what we have not heard, despite
12 asking again and again, is whether the defendant disputes the
13 expenses that we have identified. He may dispute whether those
14 expenses are recoverable as restitution. That is a legal
15 argument that he can make, and we'll all dust off our tort
16 casebooks to think about but-for cause and proximate cause and
17 look at the statute and decide if that's the case. But all we
18 have done in our restitution argument, or at least in our
19 restitution submission, is list the expenses that happened from
20 when Fowler said "I will invest in this league" until everyone
21 realized that he had no money to invest in this league and he
22 had been lying to them.

23 Again, in a week or two weeks or however much time, I
24 think Mr. Sapone could strengthen his 3553(a) arguments, and it
25 sounds like that's what he wants to do, but that is different

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1 from saying I need to find facts that require a *Fatico* hearing,
2 because we all agree on the amount of funds that flowed through
3 Mr. Fowler's account as part of the cryptocurrency scheme. We
4 all agree that he defrauded the AAF. I don't think there's
5 much dispute that the expenses we listed are what they say they
6 are. And so again, that was why we think we can go forward
7 with a substantial part of the sentencing today, and we are
8 interested, we are extremely committed to getting this done as
9 soon as possible. This case was charged four years ago, and
10 it's time. It's time for the Court to impose sentence.

11 THE COURT: OK. Anything else from defense counsel on
12 that?

13 MR. SAPONE: No. I could just say to your Honor that
14 the moment that I discover additional information, new
15 information, I will share it with the government. I will work
16 very hard, every day, on this. Mr. Fowler has committed to
17 remain in New York and work with me daily. And so we have no
18 reason to want to delay this longer than it needs to be, and
19 that's why I suggested a week, because I'm being optimistic
20 that I could work very hard for the next week and be ready for
21 sentencing.

22 THE COURT: From the government's perspective --
23 again, I have concern about witnesses coming here and victims
24 coming here and having their time wasted. We've heard from the
25 victim who wanted to make a victim impact statement here in

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1 court. From the government's perspective, what prejudice is
2 there to the government if this is adjourned for a week or two
3 weeks in terms of the victims, the witnesses or the government?

4 MR. SWETT: The first and the most serious prejudice,
5 which we identified in our letter, and the Court has addressed,
6 which we appreciate, to some extent, is people coming in to be
7 available for this. Mr. Treyzon was able to speak, and we
8 appreciate that the Court gave him that opportunity.

9 We still don't know whether the defendant will
10 challenge the facts that Mr. Engel has put forth as it relates
11 to restitution -- again, not using Mr. Engel as a vehicle to
12 advance 3553(a) arguments. So it's possible that this
13 proceeding concludes and we talk to Mr. Sapone and he says
14 yeah, I don't actually dispute the expenses, in which case
15 likely we wouldn't need to have him available. We don't know
16 that yet, and that's what we've been trying to find out.

17 So the alternative is prejudicial to the government
18 and to individuals that have come in at the government's
19 request. Mr. Engel, if he has to come back -- from Texas, I
20 believe -- if he has to come back from Texas, that will be a
21 burden on him and an unnecessary one that could have been
22 avoided if a number of things had happened differently. But
23 that's the main prejudice.

24 Secondly, this is a case that needs to wrap up, and
25 it needs to wrap up for a number of reasons, not just having to

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1 do with the government's interest in finality. There are
2 large, large seizures of funds involved in GTS and Crypto
3 Capital that may be folded into restitution, that may
4 ultimately have claimants who wish to access those funds.
5 There's \$60 million in the U.S. There's, I'd say, in excess of
6 a hundred million dollars overseas. Once the Court orders
7 forfeiture and identifies property subject to forfeiture, then
8 the government and other interested individuals can begin the
9 process of trying to finalize that forfeiture. And this is
10 something that has been -- these funds have been sitting there
11 for a long time, and I think there are a number of people who
12 are interested in starting that process as soon as possible.

13 THE COURT: OK. And from the government's
14 perspective, are the government's plans for Mr. Engel, for this
15 witness, is that he would -- if we were to adjourn this for a
16 week, is that he would stay in New York for this week, or would
17 he be returning to Texas and coming back in a week in any
18 event?

19 MR. SWETT: We have not discussed that with Mr. Engel.
20 I think the first thing we would do is ascertain whether, in
21 fact, he was necessary to be here. We don't know that yet.
22 But we don't know whether he would stay here or whether he
23 would return to Texas.

24 THE COURT: OK.

25 All right. Hold on a second.

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1 Thank you.

2 All right. Here's what I suggest. We can adjourn
3 sentencing for about a week. We could do it either on April
4 the 28th at 3:30 or May 2 at 3:30.

5 Do either of those dates, both of those dates, work
6 for the government?

7 Hold on. I think the victim is raising -- counsel for
8 the government --

9 MR. TREYZON: Your Honor, I apologize.

10 THE COURT: Yes.

11 MR. TREYZON: Mr. Engel was scheduled to start a
12 specially set trial May 1, so he would not be able to travel
13 back here (inaudible).

14 MR. ENGEL: Your Honor, I apologize.

15 Brian Engel, by the way, for the record.

16 I'm sorry.

17 I am a lawyer for the trustee. I did most of the
18 investigation, which is why you see me on the affidavits. I
19 know more about the facts than, I guarantee you, anybody in
20 this courtroom.

21 That said, I was specially set in a trial in a case
22 that was filed originally in 2015 about some young kids who
23 suffered carbon monoxide poisoning.

24 THE COURT: OK. Before we get -- let me just ask you,
25 how's April 28? Are you available then?

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1 MR. ENGEL: Your Honor, I cannot be available. That's
2 the pretrial hearing date and motions *in limine* for that May 1
3 trial. So I'm a pumpkin until -- that's probably a ten-day
4 trial, ten calendar days, because everybody's thinking it's
5 eight trial days.

6 THE COURT: OK.

7 MR. ENGEL: So I'm a pumpkin until -- I don't have a
8 calendar with me, but probably May 15-ish, May 10-ish.

9 THE COURT: OK.

10 MR. ENGEL: I'm here today, and I can speak to this
11 complaint if Mr. Sapone wants to ask me questions about it. I
12 will come back, obviously, if the Court needs me to. I don't
13 want to inconvenience Mr. Fowler at all, but I'm not in a
14 position to be inconvenienced myself --

15 THE COURT: OK.

16 MR. ENGEL: -- because there's other (inaudible)
17 involved.

18 THE COURT: All right. Thank you.

19 MR. SWETT: Your Honor, again, Mr. Engel, to the
20 extent defense wants to question him, is relevant to
21 restitution, and we still want to go forward today, but if
22 we're not doing anything today, we want to do sentencing and
23 forfeiture as soon as possible. And so given that we don't
24 know if Mr. Engel will be examined and given that his relevance
25 is to whether the expenses were properly calculated, we want to

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1 move this forward as quickly as possible.

2 THE COURT: All right. Hold on a second.

3 OK. Let's do this. Let's adjourn this matter until
4 May 17 at 3:30.

5 Does that date and time work for the government?

6 MR. SWETT: One moment, your Honor?

7 That works for the government.

8 THE COURT: Does that work for the defense?

9 MR. SAPONE: Yes, your Honor.

10 THE COURT: All right.

11 Let's also do this so we don't end up in a similar
12 situation. Let's have the parties file a joint status report
13 on May the 2nd letting me know whether or not the defense still
14 wants to call Mr. Engel, whether or not the defense is seeking
15 any sort of *Fatico* hearing, just to make sure that we're ready
16 to go then on May the 17th. Let's get that joint status report
17 filed on May 2, on or before May 2.

18 MR. SAPONE: Yes, your Honor.

19 THE COURT: Anything else from the government for
20 today?

21 MR. SWETT: Your Honor, we want to put on the record
22 that if the sentencing is adjourned beyond the 17th, the
23 government will likely seek the defendant's remand pending
24 sentencing given the delay, given issues THAT we have raised in
25 a bail letter that we brought to the Court's attention

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1 involving gambling, and given our concern, frankly, that this
2 could drag on, depending on what happens on the defense side.
3 So we're not asking the Court to do anything now, but we want
4 to put on the record that we may likely take that position if
5 the sentencing moves, and in light of all of the adjournments,
6 if the Court imposes a term of imprisonment on the 17th, we
7 will likely be seeking immediate remand.

8 THE COURT: Anything else from the defense?

9 MR. SAPONE: I just wanted to make clear that it is
10 not (inaudible) Mr. Fowler has done anything wrong.

11 THE COURT: They're not asking for anything now.
12 They're just saying that that's what they may do when we get
13 there. Hopefully, it is my sincere hope and my belief that we
14 will not be adjourning this after May 17.

15 MR. SAPONE: Yes, your Honor.

16 THE COURT: Anything else from the defense?

17 MR. SAPONE: No. Thank you.

18 THE COURT: OK.

19 We're adjourned. Thank you.

20 (Adjourned)
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